

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #2	CCRB Case #: 202003378	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 05/15/2020 6:28 PM	Location of Incident: 236 West 122nd Street	Precinct: 28	18 Mo. SOL 11/15/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 05/18/2020 2:47 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 05/18/2020 2:47 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Mahon	26892	955116	NARCBMN
2. CPT Daniel Campbell	00000	932403	DBMN
3. DT3 Brandon Gembecki	4792	949015	NARCBMN

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Mahon	Abuse: Police Officer Brian Mahon questioned § 87(2)(b)	
B.POM Brian Mahon	Abuse: Police Officer Brian Mahon frisked § 87(2)(b)	
C.POM Brian Mahon	Abuse: Police Officer Brian Mahon searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Brian Mahon	Abuse: Police Officer Brian Mahon refused to provide his shield number to § 87(2)(b)	
E.DT3 Brandon Gembecki	Abuse: Detective Brandon Gembecki refused to provide his shield number to § 87(2)(b)	
F.CPT Daniel Campbell	Abuse: Captain Daniel Campbell refused to provide his shield number to § 87(2)(b)	

Case Summary

On May 18, 2020, § 87(2)(b) filed the following CCRB complaint via the Call Processing System.

On May 15, 2020, at approximately 6:30 pm outside 236 West 122nd Street in Manhattan, Police Officer Brian Mahon of Manhattan North Narcotics, followed by Detective Brandon Gembecki and Captain Daniel Campbell (of the same command), approached § 87(2)(b)'s vehicle, which was double-parked outside 236 West 122nd Street in Manhattan with § 87(2)(b) sitting in the driver's seat. Based on observations made earlier, Police Officer Mahon proceeded to question § 87(2)(b) regarding guns and contraband (**Allegation A: Abuse of Authority – Question:**

§ 87(2)(g)). Police Officer Mahon then removed § 87(2)(b) from the vehicle and frisked him (**Allegation B: Abuse of Authority – Frisk:** § 87(2)(g)). Police Officer Mahon then searched the vehicle and recovered a partially consumed bottle of alcohol (**Allegation C: Abuse of Authority – Vehicle Search:** § 87(2)(g)). § 87(2)(b) allegedly requested the shield numbers of all three officers but none of them provided it (**Allegations D, E, F: Abuse of Authority – Refusal to Provide Shield Number –** § 87(2)(g)). Police Officer Mahon issued § 87(2)(b) summonses for § 87(2)(b) (Board Review 10).

The involved officers were not deployed with Body-Worn Cameras (BWCs) at the time of the incident. Video footage of parts of the interaction, recorded on by various bystanders on cellphones, was provided by § 87(2)(b) (Board Review 01-04).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Brian Mahon questioned § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Brian Mahon frisked § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on June 16, 2020 (Board Review 05). Police Officer Mahon was interviewed on December 18, 2020 (Board Review 06). Captain Campbell was interviewed on March 17, 2021 (Board Review 07). Detective Gembecki was interviewed on April 6, 2021 (Board Review 08). § 87(2)(b) who was in the passenger seat of § 87(2)(b)'s vehicle, declined to provide a statement.

As established by testimony and video footage, the following facts are undisputed: On May 15, 2020, at approximately 6:30 PM, § 87(2)(b) entered the driver's seat of his rented BMW, which he had left double-parked outside 236 West 122nd Street in Manhattan. As he closed the door, Police Officer Mahon (in plainclothes) approached the open window and grabbed onto § 87(2)(b)'s left wrist. When § 87(2)(b) told him to "get off," Police Officer Mahon stated: "I'm not going to get off you because I don't know what you put down there alright?" When § 87(2)(b) replied that he "didn't put nothing nowhere," Police Officer Mahon ordered him to unbuckle himself and asked: "You have no weapon on you bro? — nothing on you?" (Board Review 01: 00:16, Video 1) § 87(2)(b) replied that he had "nothing on him," and complied when ordered to exit the vehicle. Police Officer Mahon then frisked § 87(2)(b) first focusing on his waist and pants pockets (see Board Review 01: Video 1, 00:20 - end; Board Review 02: Video 2). Police Officer Mahon then searched the interior of the vehicle, entering through the driver's-side door and inspecting the area immediately around the driver's seat (Board Review 03: Video 3). Ultimately, Police Officer Mahon located a partially consumed bottle of liquor from the area under the front passenger-seat.

§ 87(2)(b) stated that he left his vehicle double-parked on West 122nd Street, leaving § 87(2)(b) in the front passenger-seat, to make a quick visit to a friend on the block. While he was vague about

the reason for his visit, § 87(2)(b) stated that he: walked a few hundred feet and met the friend outside his residence, spoke with him for a few minutes without making any physical contact or exchanging any materials, and then returned to the double-parked BMW without interacting with anyone during the walk between and with nothing in his held in his hands. § 87(2)(b) stated that there was a partially consumed bottle of tequila under § 87(2)(b)'s seat, from which she had consumed the night before. However, he stated that neither he nor § 87(2)(b) were intoxicated in any manner at the time of the incident. As § 87(2)(b) got back into the BMW and closed the door, Police Officer Mahon appeared outside his open window and asked him, "What did you throw?" He then opened the door and pulled § 87(2)(b) out of the vehicle, without providing any further explanation as to what was happening. Turning § 87(2)(b) around and against the BMW, Police Officer Mahon then patted down the full length of his body but did not enter any of his pockets. He was then told to go stand by the rear with Detective Gembecki and Captain Campbell.

Police Officer Mahon stated that he and his partners were assigned to routine narcotics patrol in the general vicinity of the incident location - both mobile and parked at specific positions for general surveillance and enforcement purposes. Police Officer Mahon stated that the officers were tasked to operate in that specific area because it had been an area of concern during the summer of 2020 — it was the epicenter of a recent spate in gang-related gun violence. Police Officer Mahon also added that daytime summer activities had become a hotbed for potential gun violence: neighborhoods there were seeing a rise in large "pop-up" block-parties — impromptu gatherings of people on the block, with alcohol and marijuana being consumed in open air. Per Police Officer Mahon, these events became increasingly prone to violence as they progressed through the day, until they eventually became shooting locations.

On the evening of May 15, 2020, as Police Officer Mahon drove down West 122nd Street with his partners in an unmarked vehicle, he observed between 50 to 100 individuals gathered on the sidewalks outside near the center of the block, with people spilling onto the street and vehicles double-parked on both sides. The crowd was congregated as one large group, with smaller circles of people — some drinking from open containers and others smoking marijuana cigarettes — dispersed all over. Police Officer Mahon stated that he had discretion as to how to act – he typically did not disperse block-parties if they were not causing problems.

Despite the large number of people in the crowd, Police Officer Mahon happened to notice § 87(2)(b) standing by the sidewalk as he slowly drove past. In his CCRB interview, Police Officer Mahon stated: "As I am driving by and just looking at the group, I noticed § 87(2)(b) to have an unusual reaction to our presence. I noticed him get wide-eyed. I heard him audibly say the word 'fuck.' And that is what drew my attention to him." Appearing wide-eyed and nervous, § 87(2)(b) began walking away from the group of people he was standing with, some of whom told him to "run!" At this time, Police Officer Mahon first noticed the outline of a bulge under § 87(2)(b)'s jeans, possibly from something contained in one of his front pockets. Per Police Officer Mahon, the outline of the object appeared to be "heavy and weighted." He stated: "The size and shape of the bulge were definitely consistent with what could have been a firearm or a large knife."

As soon as he saw this bulge, Police Officer Mahon stopped the police vehicle, exited, and began to follow § 87(2)(b) as he continued to walk down West 122nd Street. While § 87(2)(b) was not running, he had picked up his pace and held his body "bladed" to the side. Police Officer Mahon was initially following § 87(2)(b) at a distance of approximately twenty feet. When § 87(2)(b) then stopped to enter a double-parked vehicle through the driver's-side door, Police Officer Mahon was closer, about ten feet away, as § 87(2)(b) was entering the vehicle. § 87(2)(b) was fully seated by the time Police Officer Mahon reached his door. Although the windows were rolled up, Police Officer Mahon was now in a position to clearly see that § 87(2)(b) was in the process of, "Stuffing

something underneath the seat he was sitting on.”

§ 87(2)(b) complied when Police Officer Mahon ordered him to roll his window down but then immediately started shouting at the officers. § 87(2)(b) was being particularly belligerent; he threatened “to shoot” the officers and told them to “suck his dick” and “get the fuck away.” As § 87(2)(b) yelled, Police Officer Mahon was able to visually confirm at this point that the object under the seat was a bottle not a weapon, that the bulge he had seen earlier in § 87(2)(b)'s jeans was no longer visible, that § 87(2)(b) had nothing in his hands, and that he was not attempting to reach for anything in the interior of the car. At the same time, Police Officer Mahon had not actually seen § 87(2)(b) remove whatever it was that had created the bulge; this left open the possibility that he was still in possession of a concealed weapon, or within reaching distance of a weapon he had secreted. That § 87(2)(b) was threatening to shoot him further raised the possible presence of a weapon in the vehicle or on his person.

§ 87(2)(b) provided a total of four video files of the incident all captured on cell phone, some by unidentifiable recorders (Board Review 01-04). While it appears that Video 1 was, as § 87(2)(b) said, recorded by § 87(2)(b) from the passenger seat of the vehicle, exactly who recorded the other segments could not be determined. Notwithstanding the disparate segments, the investigation determined that the video files captured the successive stages of the incident in a partial but chronological timeline.

As described earlier, Video 1 (Board Review 01) appears to show the moments following Police Officer Mahon's approach of § 87(2)(b)'s vehicle. Once Police Officer Mahon pulls § 87(2)(b) out of the vehicle, Police Officer Mahon begins to frisk § 87(2)(b) at 00:33: hooking his arm around § 87(2)(b)'s waist, Police Officer Mahon first appears to make contact with the front side of § 87(2)(b)'s outer layers; at 00:38, Police Officer Mahon then reaches around and pats down his rear jeans pockets. Video 2 (Board Review 02), at 15 seconds in duration and recorded by someone across the street, appears to be partially synchronous with Video 1, showing § 87(2)(b) being frisked by Police Officer Mahon (00:03 - 00:10). Police Officer Mahon appears to pat around § 87(2)(b)'s waistband, mid-section, torso, and front and rear pants pockets. While § 87(2)(b) appears to be verbally irate in nearly all of the footage, the videos show no instance of him threatening to “shoot” the officers.

As noted previously, Police Officer Mahon issued § 87(2)(b) a total of three summonses – for § 87(2)(b) (Board Review 10).

An officer may approach and question an individual when there is a founded suspicion that “criminality is afoot.” People v De Bour, 40 NY2d 210 [1976] (Board Review 11). This inquiry can involve “extended and accusatory” questioning on possible criminality but must rest on specific, objective, and articulable facts. New York v. Hollman, 79 N.Y.2d 181 [1992] (Board Review 12).

An officer who asks an individual if they are in possession of a weapon must have founded suspicion. People v White, 159 AD3d 741 [2d Dept 2018] (Board Review 13) During the course of an encounter, founded suspicion may turn into reasonable suspicion if an officer makes additional observations of suspicious conduct. However, reasonable suspicion requires “individualized” and “concrete observations” of possible criminal conduct, not “vague and general” knowledge or belief. De Bour (Board Review 11).

An officer may conduct a frisk of a subject provided they have a reasonable suspicion that the subject is armed. De Bour (Board Review 11). Per Patrol Guide (P.G.) Procedure 212-11, a frisk may not be conducted solely to discover contraband or evidence of a crime (Board Review 14).

To justify a frisk, an officer must credibly articulate “proof of a describable object or of describable conduct which provided a reasonable belief that an individual possessed a gun...” People v Prochilo, 41 NY2d 759 [1977] (Board Review 15) Innocuous behavior susceptible to innocent interpretation, such as a subject’s “mere nervousness,” “fidgeting,” or walking at a “quick pace,” do not indicate the presence of a concealed weapon. White (Board Review 13).

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

Allegation (C) Abuse of Authority: Police Officer Brian Mahon searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that Police Officer Mahon searched § 87(2)(b)'s vehicle. Video 3 (Board Review 03), 15 seconds in duration, appears to be recorded by a third party standing within visual range of the driver’s side door. The footage shows Police Officer Mahon leaning into the driver’s side seat and searching the area under the wheel / dashboard. Police Officer Mahon located a partially consumed bottle of liquor from the area under the front passenger-seat.

As previously discussed, Police Officer Mahon stated that he observed the bottle of partially consumed alcohol in § 87(2)(b)'s vehicle prior to conducting the vehicle search.

Both New York State Vehicle and Traffic Law (VTL) § 1227 (Board Review 16) and NYC Administrative Code 10-125 (Board Review 17) prohibit the possession of open containers containing alcohol in a vehicle. The courts have ruled that officers may search a vehicle pursuant to observations of containers of alcohol that provided sufficient probable cause to suspect a violation of VTL § 1227. People v Brooks, 23 AD3d 847 [2005] (Board Review 18), People v Boykin, 188 AD3d 1244 [2020] (Board Review 19).

In Brooks, the court ruled that the officers’ observation of a six-pack carton of beer with only one

bottle remaining provided sufficient probable cause to suspect a violation of VTL § 1227 and search the vehicle for open containers of alcohol.

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Brian Mahon refused to provide his shield number to § 87(2)(b)

Allegation (E) Abuse of Authority: Detective Brandon Gembecki refused to provide his shield number to § 87(2)(b)

Allegation (F) Abuse of Authority: Captain Daniel Campbell refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) stated that at some point in the incident he requested the shield numbers of all three officers but none of them responded.

All three officers denied hearing § 87(2)(b) request names or shields from any of them.

None of the video footage shows § 87(2)(b) articulating any such request.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- Police Officer Mahon has been a member of service for eight years and has been a subject in nine other CCRB complaints and 37 allegations, of which 10 were substantiated in three cases:
 - Case Number 201804513 involved substantiated allegations of Premises Entered, Frisk, and Detention, against Police Officer Mahon. The Board recommended Command Discipline A and the NYPD imposed Formalized Training.
 - Case Number 201808002 involved substantiated Stop and Frisk allegations against Police Officer Mahon. The Board recommended Command Discipline - B and the NYPD imposed Command Discipline - A.
 - Case Number 202003847 involved two substantiated allegations of Force (Nightstick as club), two substantiated Physical Force allegations, and a substantiated allegation of False Official Statement. The Board recommended Charges. A final disposition has not been rendered.
- Detective Gembecki has been a member of service for 11 years and has been a subject in 11 other CCRB complaints and 30 allegations, of which two were substantiated in two cases:
 - Case Number 201509979 involved a substantiated allegation of Retaliatory Summons against Detective Gembecki. The Board recommended Formalized Training and the NYPD imposed Formalized Training.
 - Case Number 201806951 involved two substantiated allegations of Discourtesy - Word against Detective Gembecki. The Board recommended Command Level Instructions and the NYPD imposed Instructions.
- Captain Campbell has been a member of service for 18 years and has been a subject in 27 other

CCRB complaints and 73 allegations, of which three were substantiated in two cases:

- Case Number 200607138 involved a substantiated allegation of Threat of Arrest against Captain Campbell. The Board recommended Command Discipline. The NYPD imposed no disciplinary action.
- Case Number 201004296 involved a substantiated Frisk charge against Captain Campbell. The Board recommended Charges. The NYPD imposed Command Discipline – B.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) rejected mediation.
- A Notice of Claim query was submitted to the New York City Comptroller's Office on February 22, 2022. Any response will be added to the case file upon receipt.
- § 87(2)(b)

Squad: 02

Investigator:	_____ /sprakash Signature	_____ Inv. Santosh Prakash Print Title & Name	_____ 3/3/22 Date
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Squad Leader:	_____ Alexander Opoku-Agyemang Signature	_____ IM Alexander Opoku-Agyemang Print Title & Name	_____ 3/18/2022 Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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